

REGULATION HISTORY

TYPE OF REGULATION: Sales and Use Tax
REGULATION: 1619
TITLE: Foreign Consuls
PREPARATION: Cecilia Watkins/Todd MacMurray
LEGAL CONTACT: John Waid

Regulation 1619 interprets and explains the Sales and Use Tax Law as it applies to sales to foreign consuls. The purpose of the proposed amendment is to add new language to subdivision (a)(2) and (b) in order to provide guidance to foreign consuls and retailers on new requirements for establishing exempt sales or leases of vehicles. Staff recommends an effective date of June 1, 2003 to correspond to the effective date of the Office of Foreign Missions' (OFM's) change in procedures.

REGULATION HISTORY

June 30, 2004: Placed on Chief Counsel Matters, request for authorization to publish.
May 12, 2004: Regulation withdrawn from Office of Administrative Law (OAL). (Originally, staff proposed a January 1, 2004 effective date for the regulation rather than OFM's date of June 1, 2003, based on the date [December 2003] the Board provided notice to affected business code permittees and vehicle industry representatives. However, the OAL believes that an operative date other than June 1, 2003, would cause the regulation to be non-conforming with the underlying federal directive).
April 14, 2004: Regulation submitted to OAL for approval.
March 23, 2004: Board approved Section 100 change. (Vote 5-0)
March 23, 2004: Placed on Chief Counsel Matter for approval of a Section 100 change.

Sponsor: Board
Support: None
Oppose: None

M e m o r a n d u m

To : Ramon J. Hirsig
Executive Director – MIC: 73

Date: June 10, 2004

From : 
Acting Deputy Director
Sales and Use Tax Department – MIC: 43

Subject : **Request for Authorization to Publish Proposed
Amendments to Regulation 1619, *Foreign Consuls*
Chief Counsel's Rulemaking Calendar - June 30, 2004**

We are seeking your approval to request authorization from the Board to publish proposed amendments to Regulation 1619, *Foreign Consuls*. Regulation 1619 explains the application of tax to sales of tangible personal property, including vehicles, to foreign consular officers, employees, or members of their families.

The reason for the revision is as follows: The Office of Foreign Missions (OFM) revised its policies and procedures to require that all sales or leases of vehicles to foreign consular officers, employees, or members of their families ("Foreign Consuls") be specifically authorized for tax exempt eligibility by the OFM. To obtain authorization from the OFM, a retailer of vehicles must: 1) obtain and retain a copy of the Tax Exemption Card (Personal or Mission) or protocol identification card from the Foreign Consul; and 2) contact and obtain a letter directly from the OFM verifying the eligibility of a vehicle sale or lease to the Foreign Consul as exempt from tax. The second requirement was instituted by the OFM effective June 1, 2003 (see attached notification from OFM). These requirements will enable OFM to verify reciprocity with the Foreign Consul's government for purposes of determining whether the sale or lease of a vehicle to a Foreign Consul can be considered exempt from the sales and use taxes. Staff is proposing amendments to Regulation 1619 in order to provide guidance to Foreign Consuls and retailers on the new requirements for establishing exempt sales or leases of vehicles.

We initially received approval from the Board to amend the regulation in accordance with Title 1, California Code of Regulations, section 100. In that version of the regulation, staff proposed a January 1, 2004 effective date rather than OFM's date of June 1, 2003, based on the date of the Board's special notice to all affected business code permittees and vehicle industry representatives and the Tax Information Bulletin. Both were distributed in December 2003. We believed our notification to affected accounts in December 2003 was more thorough than OFM's letter to the California New Car Dealers Association sent in May 2003. However, the Office of Administrative Law is of the opinion that the use of an

operative date other than June 1, 2003 causes the regulation to be out of conformity with the underlying federal directive.

Staff recommends the amendments have a new effective date of June 1, 2003 to correspond to the effective date of the OFM's change in procedures. Staff also recommends using the standard public hearing process. Publishing the change will give interested parties an opportunity to comment on the amendments to the regulation, including the operative date.

Attached is a copy of the May 2003 notice from OFM and the proposed amendments to the regulation.

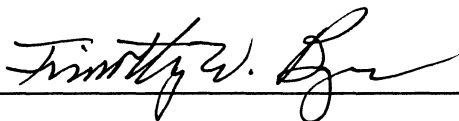
With your approval, this matter will be placed on the Chief Counsel Matters Rulemaking Agenda for June 30, 2004.

Recommendation by:



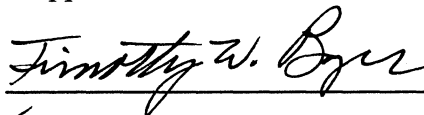
Deputy Director

Approved:



Timothy Boyer, Chief Counsel
Legal Department

Approved:



Ramon J. Hirsig, Executive Director

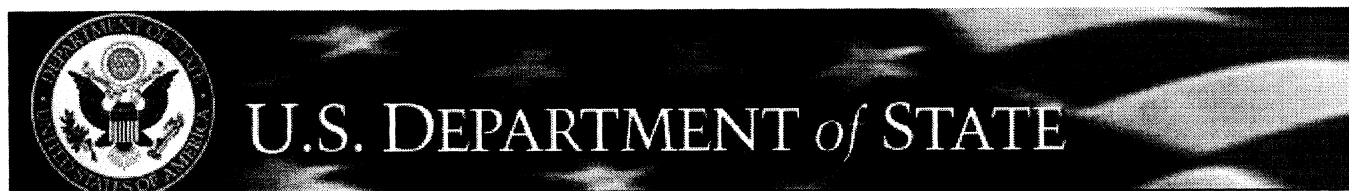
BOARD APPROVED

At the _____ Board Meeting

Deborah Pellegrini, Chief
Board Proceedings Division

cc (all with attachment):
Mr. Timothy W. Boyer (MIC 83)
Ms. Deborah Pellegrini (MIC 81)
Ms. Janice Thurston (MIC 82)
Mr. Jeffrey Graybill (MIC 82)
Mr. John Waid (MIC 82)
Ms. Trecia Nienow (MIC 82)
Mr. Randy Ferris (MIC 82)
Mr. Jeffrey L. McGuire (MIC 92)
Mr. Geoffrey E. Lyle (MIC 50)
Ms. Laureen Simpson (MIC 50)
Ms. Cecilia Watkins (MIC 50)
Ms. Mariflor Jimenez (MIC 50)

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Diplomatic Vehicle Tax Exemption

03-91

The Department of State informs their Excellencies and Messieurs and Mesdames the Chiefs of Mission of a change in procedure for claiming tax exemption on the purchase of an official or personal automobile.

Effective June 1, 2003, the procedure and policy for obtaining tax exemption on the purchase or lease of any vehicle in the United States by diplomatic missions and members has changed. Before the transaction is completed the purchaser or leaseholder must ensure that the seller (i.e. auto dealer) obtains a letter from the Office of Foreign Missions' Tax and Customs Programs Office verifying the purchaser's tax exemption status. This change in procedure is intended to assist members of the foreign diplomatic community purchasing motor vehicles in the United States.

Also effective immediately, the Office of Foreign Missions will consider reciprocity whenever verifying ones tax-exempt status for the purchases or lease of vehicles by

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a diplomatic mission or its members. Thus, if a United States Mission or any of its members are charged a tax on the purchase of an automobile by their host government, the Office of Foreign Missions will impose a reciprocal vehicle surcharge on that particular mission and its members in the United States. The vehicle surcharge will be equivalent to the rate of tax imposed on the United States Mission or personnel in the counterpart country. This reciprocal response will mirror the restrictions on tax-exempt vehicle purchases or leases imposed by the counterpart country. Restrictions may be applied by employee status, i.e. if U.S. Mission Administrative and Technical personnel are taxed, Administrative and Technical personnel of the counterpart country will receive a reciprocal vehicle registration surcharge.

Any mission subject to such a reciprocal surcharge will be notified of the specific rate and other details of this country specific policy. This notification will be delivered within thirty working days of the date of this note. Missions not receiving such notification are

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entitled to purchase all automobiles tax-free (if the seller has obtained verification of the buyer's tax status from OFM) unless subsequently notified by OFM to the contrary.

To summarize: All missions and diplomatic personnel who wish to purchase or lease a vehicle, for official or

personal use, in the United States are required to adhere to the following procedures:

(1) The purchaser must present a valid mission tax exemption card, a personal tax exemption card, or a protocol identification card to the seller/leser.

(2) The buyer must request that the seller/leser contact the Tax and Customs Programs Office of the Office of Foreign Missions for a determination on the tax-exempt status of the purchaser. The telephone number that the seller should use is (202) 895-3500.

If the purchase is being made outside of the Washington D.C. area, the purchaser may also contact an OFM Regional Office. The OFM Regional Offices are located in New York, Miami, Chicago, San Francisco, and Los Angeles.

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(3) The Office of Foreign Missions will provide a letter to the seller/leser stating whether the purchaser is eligible for exemption from any tax imposed at the point of purchase/lease. The only legal means of obtaining a diplomatic tax exemption on the purchase of a vehicle is through the issuance of this letter by the Office of Foreign Mission.

Existing vehicle registration procedures have not changed as a result of this new policy. Diplomatic missions and their members, including dependents, are still required

to register all vehicles that they own or lease with the Office of Foreign Missions, Diplomatic Vehicle Office. Also all original ownership documents must be submitted to the Office of Foreign Missions' Diplomatic Motor Vehicle Office for proper vehicle registration.

The Office of Foreign Missions Diplomatic Tax Program is available for any questions or concerns regarding this change in policy. This office can be contacted by phone at (202) 895-3563.

Department of State,

Washington, **May 15, 2003**

Proposed Amendments to Regulation 1619. Foreign Consuls.

(a) Application of Tax.

(1) IN GENERAL. Neither sales tax nor use tax applies to the sale or use of tangible personal property sold or leased to foreign consular officers, employees, or members of their families, to the extent that such persons have been identified by the U. S. Department of State as exempt from the tax pursuant to treaties or other diplomatic agreements with the United States. Persons identified as exempt from taxation pursuant to treaties or other diplomatic agreements with the United States will be issued a Tax Exemption Card by the U. S. Department of State which identifies the bearer as exempt from tax and which specifies the extent of the exemption.

Tax applies to sales of tangible personal property to foreign consular officers, employees, or members of their families, who do not hold a Tax Exemption Card issued by the U. S. Department of State except as provided in subparagraph (a)(2) below. Also, tax applies to sales of tangible personal property to persons holding Tax Exemption Cards where their total purchases in a single transaction do not exceed the minimum level of exemption as specified on the Tax Exemption Card. Sales or use tax applies to the sale or use of tangible personal property sold to nationals of the United States even though such persons may perform consular functions for foreign governments.

(2) VEHICLES. In addition to the exemption provided in subparagraph (a)(1), the purchase or lease of vehicles on or after the date of assumption of duties by foreign consular officers, employees, or members of their families who do not hold a Personal Tax Exemption Card will be exempt from the sales and use taxes if an identification letter is furnished directly to the retailer by the Office of Foreign Missions, U. S. Department of State (OFM). In the absence of a Mission Tax Exemption Card, the purchase or lease of vehicles on behalf of a mission also will be exempt from the sales and use taxes provided an identification letter is furnished directly to the retailer by OFM. Such letters must confirm the name, exempt status, identification number (if available), and the date of assumption of duties of the person seeking the exemption (if applicable) and must be furnished to the retailer at the time of the sale. For purposes of this regulation, "vehicle" is as defined in Section 6272 of the Revenue and Taxation Code.

Effective June 1, 2003, the sale or lease of vehicles to foreign consular officers, employees, or members of their families will be exempt from the sales and use tax if:

(A) The purchaser provides a valid Tax Exemption Card (Personal or Mission) or a protocol identification card to the retailer; and

(B) The retailer contacts and obtains directly from the OFM a letter stating that the vehicle sale or lease to the purchaser is eligible for exemption from tax ("OFM Eligibility Letter").

(b) Records of Retailers. Invoices or other written evidence of sale must be retained by the retailer to support any deduction claimed on sales tax returns for sales to foreign consuls. The invoices should show the name of the purchaser, the name of the mission, the tax exemption number, the expiration date of the Tax Exemption Card, and the minimum level of exemption specified on the Tax Exemption Card. In addition, to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign diplomat or mission not holding a Tax Exemption Card, the identification letter from the OFM Office of Foreign Missions, U. S. Department of State, confirming the exempt status of the diplomat must be retained by the retailer.

Effective June 1, 2003, in addition to retaining invoices or other written evidence as specified above, the retailer must retain a copy of the Tax Exemption Card (Personal or Mission) or protocol identification card, and the OFM Eligibility Letter to support each transaction claimed as an exempt sale or lease of a vehicle to a foreign consular officer, employee, or member of his or her family.

Note: For special provisions affecting record retention, see Regulation 1698.

Authority: Section 7051 revenue and Taxation Code
Reference: Sections 6272, 6352, and 7053, Revenue and Taxation Code; and Vienna Convention on Diplomatic Relations of April 18, 1961, Article 34 (23 UST 3242) T.I.A.S. No. 7502.

The proposed amendments contained in this document may not be adopted. Any revisions that are adopted may differ from this text.